COUNTRY HEIGHTS MARKETING

v.

FIRSTLAND MANAGEMENT

HIGH COURT MALAYA, SHAH ALAM
ABDUL WAHAB PATAIL J
[SP 24-247-97]
7 NOVEMBER 1997

CIVIL PROCEDURE: *Counterclaim - Sessions Court - Jurisdiction - Counterclaim exceeding value limit of Sessions Court's jurisdiction - Whether Sessions Court competent to dispose of the whole matter - Written agreement by parties conferring jurisdiction upon Sessions Court - Subordinate Courts Act 1948, ss. 65(3), 66(1) - When applicable*

CIVIL PROCEDURE: *Transfer - Sessions Court to High Court - Whether there is automatic right of transfer to High Court if counterclaim exceeds value limit of Sessions Court's jurisdiction - Written agreement by parties conferring jurisdiction upon Sessions Court - Subordinate Courts Act 1948, ss. 65 & 66*

The defendant had earlier commenced an action in the Sessions Court against the plaintiff claiming the sum of RM100,000 for services allegedly provided. The plaintiff then filed its defence and counterclaimed for damages amounting to RM482,474. Subsequently, the plaintiff applied ('the instant application') to have the whole matter before the Sessions Court transferred to the High Court at Shah Alam ('the instant court') on account that the amount under its counterclaim exceeded the value limit of jurisdiction of the Sessions Court. The defendant opposed the instant application on the grounds of delay and cost; and further submitted that the plaintiff would not be prejudiced by the continuation of the matter before the Sessions Court, nor should the filing of baseless high-value counterclaims be allowed to truncate actions commenced in the Sessions Court.

Held:

[1] Notwithstanding the general value limit of jurisdiction of the Sessions Court, s. 66(1) of the Subordinate Courts Act 1948 ('the Act') allows the Sessions Court to proceed with a counterclaim which exceeds its value limit of jurisdiction provided that any award made in respect of the counterclaim at the end of the trial does not exceed its value limit of jurisdiction. The parties may also enter into a written agreement under s. 65(3) of the Act to continue the matter in the Sessions Court. Therefore,

there is no automatic right of transfer to the High Court merely because a counterclaim exceeds the value limit jurisdiction of the Sessions Court. The provisions of ss. 65 and 66 of the Act are meant to prevent defendants from delaying actions or suits commenced in the Sessions Court through the filing of counterclaims beyond the value limit of jurisdiction of the Sessions Court.

[2] Section 65(1) of the Act confers the Sessions Court with unlimited jurisdiction to try all actions and suits of a civil nature in respect of motor vehicle accidents, landlord and tenant, and distress, and, jurisdiction to try all other actions and suits of a civil nature where the amount in dispute or the value of the subject-matter does not exceed RM250,000. Since s. 65(1) of the Act recognises unlimited jurisdiction, it is clear that the monetary limit therein is not an inviolable bar in so far as jurisdiction is concerned; the parties may agree under s. 65(3) of the Act to confer jurisdiction in cases where the claim is beyond the said limit. Section 66(1) of the Act is applicable only in cases where no agreement under s. 65(3) of the Act has been filed and no application for a transfer has been made.

[3] The instant application was deficient in failing to state whether the defendant was agreeable to proceed under s. 65(3) of the Act. The instant application was also premature in that the issues outstanding in the Sessions Court had to be dealt with first before the issue of a counterclaim exceeding the value limit of jurisdiction of the Sessions Court could even arise.

[Plaintiff's application for transfer dismissed.]

Case referred to:
Wong Kon Sang v. Chang Litho Press Ltd [1968] 2 MLJ 234 ***(cit)***

Legislation referred to:
Subordinate Courts Act 1948, ss. 65(1), (3), 66(1)

For the plaintiff - Justin Woon; M/s Cheah Teh & Su
For the defendant - HL Goh; M/s SK Yeoh & Jeganathan

Reported by Alex KC Lee

JUDGMENT

Abdul Wahab Patail J:

The plaintiff has filed this application to transfer summons case No. 52-247-1996 from the Sessions Court to the High Court in Shah Alam. The plaintiff was sued in that case for the sum of $100,000 for services allegedly provided. The plaintiff had since filed his defense and counterclaim for damages, including special damages in the sum of $482,474.

That briefly is the essential background of the case in the Sessions Court.

Plaintiff's opening submission for the application is based on the ground that the sum of the counterclaim exceeds the value limit of jurisdiction of the Sessions Court. The application was objected on the grounds of possibility of further delay and increased cost of trial in the High Court; and that the filing of high value counterclaims without basis could be used to frustrate actions begun in the Sessions Court. It was argued the plaintiff would not be prejudiced by the action continuing in the Sessions Court. *Wong Kon Sang v. Chang Litho Press Ltd.* [1968] 2 MLJ 234 was cited as illustration.

Counsels' reply to the objections then raised the second ground of the complexity of the case involving evidence regarding marketing and advertising. Counsel further argued that the case cited is not applicable since there was agreement under s. 65(3) of the Act, whereas there is no agreement in this case. As to costs, it would be in the cause.

Section 66 of the Subordinate Courts Act 1948 provides as follows:

> (1) Where in any action or suit of a civil nature before a Sessions Court any defense or counterclaim of the defendant involves matters beyond the jurisdiction of the Court, the defense or matter shall not affect the competence or the duty of the Sessions Court to dispose of the whole matter in controversy, so far as relates to the demand of the plaintiff and any defense thereto, but no relief exceeding that which the court has jurisdiction to award shall be given to the defendant upon the counterclaim.
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> (2) In any such case the High Court may, if it thinks fit, on the application of any party, order that the action or suit be transferred to the High Court, and the action or suit shall then be entered in the cause book or register of civil suits of the High Court, and proceeded with as if the action or suit had been originally instituted therein.

It is provided however in s. 65(3) of the said Act that:

> (3) When the parties to an action or suit which, if the amount in dispute or value of the subject-matter thereof did not exceed the limit of the jurisdiction, would be cognizable by a Sessions Court, have entered into an agreement in writing that the Sessions Court shall have jurisdiction to try the action or the suit, the Sessions Court shall have jurisdiction to try the same, although the amount of the subject-matter thereof may exceed the value limit of jurisdiction.

Notwithstanding the general value limit of jurisdiction of the Sessions Court, s. 66(1) allows the Sessions Court to proceed with such counterclaim provided that an award at the end of trial should not exceed the value limit of jurisdiction. Also the parties could make agreement under s. 65(3) of the Act to continue in the Sessions Court. There is thus no automatic right of transfer merely because a counterclaim exceeds the value limit jurisdiction of the Sessions Court. These provisions are there to prevent defendants to delay actions or suits in the Sessions Court by filing counterclaims claiming beyond the value limit of that court.

The interesting question here, although not argued by either counsel is the inter-relationship between s. 65 and s. 66. It could be said s. 65 would allow the parties to give jurisdiction to the Sessions Court in a case which would otherwise be outside the value limit of jurisdiction of the Sessions Court, but the court in making any award would be limited to a maximum within its value limit of jurisdiction under s. 66(1). If that were the interpretation given, s. 65 sub-ss. (3) and (4) would be unnecessary.

Section 65(1) itself gave the Sessions Court unlimited jurisdiction in all actions of a civil nature in respect of motor vehicle accidents, landlord and tenant and distress; and the value limit of 250,000 ringgit in respect of all other civil actions and suits. Since sub-s. (1) recognizes unlimited jurisdiction, it is clear that the monetary limit is not an inviolable bar so far as jurisdiction is concerned but that the parties could agree under s. 65(3) to confer jurisdiction in cases where the claim is beyond that limit. The provision of s. 66(1) is applicable then only in cases where no agreement under s. 65 has been filed and no application for transfer has been made.

Returning to the factual merits of this application, the chronology is as follows. The defendant had filed his claim in the Sessions Court on 27 November 1996 and applied for summary judgment by an application dated 17 January 1997 fixed for hearing on 11 April 1997. Objection by affidavit to the application was filed on 9 April 1997. The defense and counterclaim of the plaintiff was dated 10 April 1997. The plaintiff filed this application for transfer on 12 May 1997. As a result of this application the parties agreed to postpone the hearing of the application for summary judgment.

This application made no reference as to whether the defendant had refused to agree under s. 65(3) of the Act to enable the Sessions Court to have jurisdiction beyond the general value limit. The objection to this application suggests that the defendant would be agreeable to such an agreement. Be that as it may, this application is insufficient in failing to aver as to whether the other party was agreeable or otherwise to proceed under s. 65(3). From the application it is clear it is the plaintiff who is keen to move further proceedings away from the Sessions Court to the High Court. I reject the submission of complexity of the case involving evidence regarding marketing and advertising as a ground for transfer. A court must deal with the cases that come before it as it finds them. It is presumptuous to suggest that the Sessions Court is not capable of dealing with such evidence.

Furthermore, the effect of a transfer at this juncture would be to use the High Court as a venue in matters relating to the application for summary judgment and late filing of defense and counterclaim. Those issues are outstanding in the Sessions Court, and should be dealt with first before the question of existence of a counterclaim exceeding the value jurisdiction of the Sessions Court, which is the substance of this application, even arises. In other words this application is wholly premature.

Having considered the application and the arguments advanced on behalf of both parties, for these reasons the application has been dismissed with cost.